

No. 18 - \_\_\_\_\_

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In The  
**Supreme Court of the United States**

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MICHAEL ANTONIO BULLOCK, on behalf of himself  
and all others similarly situated

*Petitioner,*

v.

STATE OF NORTH CAROLINA  
*Respondent.*

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**On Petition for a Writ of Certiorari  
To the Supreme Court of North Carolina**

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Under *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), a police officer may not prolong a traffic stop beyond the time required to complete the mission of the stop to engage in unrelated investigations. Do any activities unrelated to the mission of the stop inherently prolong it, and what activities fall within the mission of a stop?

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## **PETITION FOR A WRIT FOR CERTIORARI**

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Michael Antonio Bullock respectfully petitions for a writ of certiorari to review a judgment of the Supreme Court of North Carolina.

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### **OPINIONS AND ORDERS BELOW**

The Supreme Court of North Carolina's denial of the Petition for Discretionary Review is reported at 817 S.E.2d 577. Appendix ("App") at 2a. The opinion of the Court of Appeals of North Carolina affirming the trial court's denial of Petitioner's motion to suppress evidence is reported at 811 S.E.2d 713. App. at 4a. The opinion of the Supreme Court of North Carolina reversing and remanding the decision of the Court of Appeals is reported at 805 S.E.2d 671. App. at 14a. The opinion of the Court of Appeals of North Carolina reversing the trial court's denial of Petitioner's motion to suppress evidence is reported at 785 S.E.2d 746. App. at 30a. The order of the trial court denying Petitioner's motion to suppress evidence is unreported, but the docket number is 12 CRS 61997. App. at 66a.

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### **JURISDICTION**

The judgment of the Supreme Court of North Carolina was entered on November 3, 2017. The Petitioner's timely Petition for Discretionary Review was denied on August 14, 2018. On November 5, 2018, Chief Justice Roberts extended the time within which to file a petition for writ of certiorari to and including

January 11, 2019. This Court's jurisdiction rests on 28 U.S.C. § 1257(a) (2012).

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### **CONSTITUTIONAL PROVISION INVOLVED**

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

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### **SUMMARY OF THE ARGUMENT**

When police officers conduct traffic stops, they are subject to certain limitations on their conduct. In *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), this Court held that officers cannot prolong a traffic stop beyond the amount of time reasonably required to complete the mission of the stop. Consequently, officers cannot conduct investigations into crimes unrelated to the purpose of the stop unless those investigations do not prolong the stop. Prolonging a stop to investigate other potential crimes requires reasonable suspicion that those crimes are afoot.

A police officer stopped Michael Antonio Bullock after observing him commit traffic violations. During this stop, the officer asked about Mr. Bullock's travel itinerary, searched for information about his criminal history, and interacted with Mr. Bullock in a manner intended to develop reasonable suspicion of additional crimes. This stop culminated in the discovery of narcotics in Mr. Bullock's vehicle. The North Carolina Court of Appeals concluded that the officer unlawfully prolonged the stop and that the narcotics should therefore be suppressed. The Supreme Court of North Carolina, however, held that the officer did not prolong the stop until, as a result of his various inquiries, he had developed reasonable suspicion.

Since the decision in *Rodriguez*, courts have devised different interpretations of its holding. Some courts view any actions not related to the mission of the stop as inherently prolonging the stop, while others allow for some conduct unrelated to the mission as long as it does not add time to the stop. Further, there is disagreement as to what actions are related to the mission of a traffic stop. Some courts consider checking databases for a subject's criminal history and asking about a subject's travel itinerary to be part of the mission of a stop. Other courts reject this view and regard those actions as prolonging traffic stops.

Granting certiorari in this case would allow this Court to resolve the differences in how courts interpret *Rodriguez* and analyze traffic stops. This would, in turn, help to standardize the ways in which law enforcement officers across the country treat the

motoring public. Under some interpretations of *Rodriguez*, police can use certain activities to gain the time they need to develop reasonable suspicion, effectively making *Rodriguez* a nullity. This Court should grant review to more specifically define the contours of acceptable conduct during a traffic stop and ensure equitable treatment of motorists throughout the country.

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### **STATEMENT OF THE CASE**

#### **A. Michael Antonio Bullock is Pulled Over for Minor Traffic Violations**

On November 27, 2012, Petitioner Michael Antonio Bullock was driving on Interstate 85 through Durham, North Carolina, when Officer John McDonough observed him commit several minor traffic violations, including driving seventy miles per hour in sixty and sixty-five mile per hour zones, briefly passing over the shoulder lane, changing lanes even though there was no car in front of him, and following a truck too closely. App. at 31a–32a. Officer McDonough initiated a traffic stop and requested Mr. Bullock’s license, registration, and the rental agreement for the car, all of which Mr. Bullock promptly provided. App. at 32a. Officer McDonough noted that Mr. Bullock trembled a little and had two cell phones in the center console of the vehicle. *Id.*

Officer McDonough then inquired about Mr. Bullock’s travel plans, asking “where he was going,” and Mr. Bullock stated he was going to his girlfriend’s

house on Century Oaks Drive. App. at 19a. Officer McDonough noted that Mr. Bullock “had gone past at least three exits that would have taken him where he said he was going.” *Id.* Rather than allow Mr. Bullock to wait in his car, Officer McDonough asked Mr. Bullock to join him in the patrol car while he ran the license. App. at 32a. When Mr. Bullock exited his car, Officer McDonough shook his hand and advised him that he would receive a warning for the traffic violation. *Id.* The trial court found that by doing so, Officer McDonough could “attribute [Mr. Bullock’s] nervousness to something other than general anxiety from a routine traffic stop.” App. at 42a. The court similarly found that Officer McDonough had Mr. Bullock sit next to him in his patrol car to observe Mr. Bullock while he answered questions. *Id.*

After telling Mr. Bullock he would only receive a warning, Officer McDonough asked Mr. Bullock if he could briefly search him for weapons. App. at 32a. Mr. Bullock agreed and lifted his arms in the air. *Id.* Officer McDonough frisked Mr. Bullock and found no weapons but approximately \$372 in cash. *Id.* The two then entered Officer McDonough’s patrol car. App. at 33a. As soon they entered the car, Officer McDonough began running Mr. Bullock’s information through local, state, and national databases. App. at 21a, 33a. The search of these databases revealed information about Mr. Bullock’s criminal history. App. at 19a.

While he was running Mr. Bullock’s information, Officer McDonough continued questioning Mr. Bullock about his travel plans. *Id.* According to Officer McDonough, Mr. Bullock seemed

nervous during this questioning. App. at 33a. He made eye contact with the officer when responding to certain inquiries, “but looked away when asked specifically...where he was travelling.” App. at 19a. It is unclear exactly how long Officer McDonough spent running Mr. Bullock’s information through the various databases, but Officer McDonough testified that these checks generally take “a few minutes to run.” App. at 21a. After he finished the database checks, Officer McDonough asked Mr. Bullock if he could search the vehicle. App. at 33a. Mr. Bullock consented with the exception of his personal belongings inside the vehicle. *Id.* This was the only time Mr. Bullock consented to any search.

Officer McDonough advised Mr. Bullock that he could not search the vehicle without a backup officer present. *Id.* Officer McDonough called for an officer and continued speaking to Mr. Bullock about “matters unrelated to the traffic stop” as they waited. App. at 34a. During this wait, Mr. Bullock asked Officer McDonough multiple times what they were waiting for, and Officer McDonough explained that he could get in trouble if he searched the car without another officer present. *Id.* Mr. Bullock also asked what would happen if he did not consent to a search of the car, and Officer McDonough responded that he would deploy his dog to search the car. *Id.* The backup officer, Officer Green, arrived about ten minutes after Officer

McDonough asked Mr. Bullock if he could search the vehicle.<sup>1</sup> App. at 33a.

After the backup officer arrived, Officer McDonough proceeded to search Mr. Bullock's vehicle. App. at 34a. When Officer McDonough reached the trunk of the vehicle, Mr. Bullock advised him that he could not consent to a search of the bag therein because it belonged to his sister. *Id.* Officer McDonough directed Officer Green to remove the bag from the trunk then conducted a dog search of the vehicle and the bag. *Id.* The dog alerted after sniffing the bag, so the officers searched it and found it contained 100 bundles of heroin. App. at 34a–35a.

#### **B. The Court of Appeals Concludes That the Traffic Stop Leading to the Discovery of the Heroin Was Unlawfully Prolonged**

On August 4, 2014, in the Durham County Superior Court, Judge Orlando F. Hudson, Jr. denied Mr. Bullock's motion to suppress evidence obtained by law enforcement as a result of the search of his vehicle following the traffic stop. App. at 74a. This order was effective retroactively to July 30, 2014. *Id.* Mr. Bullock then pled guilty to the charged offenses but specifically reserved the right to appeal the denial of his suppression motion. App. at 15a. Mr. Bullock appealed the denial of his suppression motion to the Court of Appeals of North Carolina, arguing that the

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<sup>1</sup> Officer McDonough testified that it took three to five minutes for the backup officer to arrive, but the dashboard video indicates the time elapsed was closer to ten minutes. App. at 33a.

trial court erred in denying his motion because Officer McDonough unlawfully extended the traffic stop under *Rodriguez*, 135 S. Ct. 1609, making the subsequent search of his car unlawful. App. at 31a. On May 10, 2016, the Court of Appeals reversed the trial court’s order denying the motion to suppress, vacated Mr. Bullock’s guilty plea, and remanded to the trial court, agreeing that the traffic stop leading to the discovery of the heroin had been unlawfully prolonged. App. at 52a–53a.

Specifically, the Court of Appeals found that Officer McDonough completed the mission of the traffic stop when he advised Mr. Bullock that he would only receive a warning for the traffic violations. App. at 41a. The court also held that several of Officer McDonough’s actions, including frisking Mr. Bullock and asking him to get into the patrol vehicle, were not related to the mission of the stop. App. at 43a–44a. The frisk was impermissible because the trial court made no findings suggesting that Officer McDonough had reasonable suspicion to believe that Mr. Bullock was armed and dangerous. App. at 44a. Additionally, the Court of Appeals concluded that Officer McDonough’s reasoning for having Mr. Bullock sit in his patrol car was wholly unrelated to the mission of the traffic stop because the database checks went beyond a routine check of a driver’s license or for warrants. App. at 45a. The court concluded that Officer McDonough’s actions exceeded the mission of the traffic stop under *Rodriguez* and he therefore impermissibly extended the stop. App. at 45a–46a.

### **C. The Supreme Court of North Carolina Reverses the Decision of the Appellate Court**

On November 3, 2017, the Supreme Court of North Carolina found that Officer McDonough did not unlawfully extend the traffic stop, thereby reversing the decision of the Court of Appeals. App. at 28a–29a. The Supreme Court concluded that Officer McDonough did not exceed the mission of the traffic stop by either frisking Mr. Bullock or asking him to sit in the patrol car. App. at 23a, 25a. The court read the language in *Rodriguez* that unrelated inquiries cannot measurably extend the duration of a stop to imply that “there are some inquiries that extend a stop’s duration but do not extend it measurably.” App. at 24a. The court concluded that the frisk, which lasted for a few seconds, constituted such a permissible extension and therefore did not require reasonable suspicion. *Id.* The court also concluded that Officer McDonough did not prolong the stop when he asked Mr. Bullock to join him in the patrol car because the duration of the stop was not extended by doing so. App. at 25a. Further, the court stated that criminal history checks, like those conducted by Officer McDonough, appear to be the sort of negligibly burdensome precautions that officers can take during a traffic stop. App. at 16a. It reached this conclusion because the *Rodriguez* opinion “favorably cited a Tenth Circuit case that allows officers to conduct those checks to protect officer safety.” *Id.* (citing *Rodriguez*, 135 S. Ct. at 1616 (citing *United States v. Holt*, 264 F.3d 1215, 1221–22 (10th Cir. 2001) (en banc), abrogated on other grounds as recognized in *United States v. Stewart*, 472 F.3d 1265, 1269 (10th Cir. 2007))). The court noted that Officer

McDonough was free to talk with Mr. Bullock until the conclusion of the three database checks. App. at 25a. Finally, the court held that Officer McDonough “gained reasonable suspicion of drug activity that justified a prolonged stop shortly after [Mr. Bullock] entered the patrol car,” but it took no position on whether reasonable suspicion existed earlier in the stop. App. at 27a.

The Supreme Court of North Carolina remanded the case to the Court of Appeals to consider Mr. Bullock’s remaining arguments on appeal. App. at 28a–29a. On February 20, 2018, reviewing only the remaining arguments on appeal and applying the decision of the Supreme Court of North Carolina, the Court of Appeals held that the trial court did not err by denying Mr. Bullock’s motion to suppress and did not commit prejudicial error by accepting Mr. Bullock’s plea deal. App. at 13a. Mr. Bullock timely petitioned the Supreme Court of North Carolina for review of those holdings, and on August 14, 2018, the Supreme Court of North Carolina denied Mr. Bullock’s petition for discretionary review. App. at 2a–3a.

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## **REASONS FOR GRANTING THE WRIT**

### **I. FEDERAL COURTS OF APPEALS AND STATE COURTS OF LAST RESORT ARE DIVIDED.**

Lower courts are divided on how to determine whether a traffic stop has been prolonged in light of

this Court’s opinion in *Rodriguez*, 135 S. Ct. 1609. This Court held in *Rodriguez* that “a seizure justified only by a police-observed traffic violation . . . ‘become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission’ of issuing a ticket for the violation.” *Id.* at 1612 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). In *Rodriguez*, a police officer pulled over a vehicle with the petitioner and another man inside after observing it drive on the highway shoulder. *Id.* After checking the petitioner’s license, registration, and proof of insurance, the officer issued a written warning for the traffic violation and returned the documents. *Rodriguez*, 135 S. Ct. at 1613. Despite the justification for the stop being “out of the way,” the officer requested permission to search the vehicle and, after the petitioner denied this permission, required the petitioner to exit his vehicle and stand in front of the patrol car while they waited for another officer. *Id.* Once the additional officer arrived, the original officer retrieved his police dog and led him around the vehicle. *Id.* The dog indicated drugs were present in the car, and a subsequent search revealed a large bag of methamphetamine. *Id.* This Court held that “a dog sniff is not fairly characterized as part of the officer’s traffic mission” and could not prolong a traffic stop beyond the “time reasonably required to complete the stop’s mission.” *Id.* at 1615–16 (quoting *Caballos*, 543 U.S. at 407). Therefore, this Court vacated the Eighth Circuit’s judgment affirming the denial of the petitioner’s motion to suppress and remanded the case for the Eighth Circuit to consider whether reasonable suspicion justified the extension of the stop. *Id.* at 1613–14, 1616–17.

Different circuit courts and state courts of last resort read and apply *Rodriguez* differently, leading to disparate results. Specifically, courts differ regarding what constitutes a prolonged stop and, relatedly, what police inquiries fall within the mission of a traffic stop.

**A. Courts differ as to what constitutes a prolonged stop.**

Courts employ diverse reasoning to determine when a traffic stop was prolonged. Some courts apply *Rodriguez* rigidly, concluding that any activities outside the mission of the stop inevitably prolong the stop and must be supported by independent justification to be permissible. Other courts take the more lenient approach that investigatory inquiries beyond the mission of the stop are permissible as long as they don't extend the time required for the original mission of the stop beyond a reasonable amount of time. The Third Circuit acknowledged this divide in its opinion in *United States v. Green*, 897 F.3d 173, 180–81 (3d Cir. 2018). That court emphasized the divergence on this issue and highlighted the difficulty courts face in applying the *Rodriguez* holding. *Id.* Because of this difficulty, the court assumed, without deciding, that the stop was prolonged at the earlier of the possible “*Rodriguez* moments” before concluding that reasonable suspicion justified this extension. *Id.* at 182. This explicit struggle by a circuit court demonstrates the need for a uniform scheme lower courts can employ to determine what constitutes a prolonged stop.

- i. The Second, Third, and Ninth Circuits as well as the highest courts in Idaho and Kansas focus on the nature of the actions when considering whether they extend a stop.

Some jurisdictions analyze whether a stop is prolonged based on whether it deviated from its initial mission. Such analyses focus on the initial reason for the traffic stop and the nature of ensuing inquiries. The Third Circuit has held that an inquiry into a defendant's criminal history exceeded the mission of the traffic stop and, therefore, impermissibly prolonged it. *United States v. Clark*, 902 F.3d 404, 411 (3d Cir. 2018). The court held that the mission of the traffic stop concluded once the officer discovered the driver was authorized to operate the vehicle; hence, the subsequent inquiries into the driver's and passenger's criminal histories were an unlawful extension of the traffic stop. *Id.*

The Second Circuit reached a similar conclusion that questions unrelated to the traffic violation that precipitated a stop prolong the stop. *United States v. Gomez*, 877 F.3d 76, 90–91 (2d Cir. 2017) (holding the good faith exception to the exclusionary rule applied because officers reasonably relied on pre-*Rodriguez* precedents at the time of the stop). The officers testified the stop in *Gomez* lasted no longer than five minutes, but the court found that one of the officer's questions detoured from the mission of the stop to a drug investigation from the moment he first approached the car. *Gomez*, 877 F.3d at 91. This,

according to the court, prolonged the stop and violated the Fourth Amendment. *Gomez*, 877 F.3d at 90–91.

Likewise, the Ninth Circuit, applying *Rodriguez*, concluded that running an ex-felon registration check and conducting a dog sniff were unrelated to the mission of a traffic stop. *United States v. Evans*, 786 F.3d 779, 786 (9th Cir. 2015) (remanding case for consideration of whether reasonable suspicion justified additional investigation). Consequently, these actions unconstitutionally prolonged the stop in question. *Id.* at 786–87.

State courts have addressed this issue in similar fashion. The Supreme Court of Idaho has held that a deviation from the original purpose of a stop inevitably lengthens the stop, impermissibly prolonging it absent some new basis to justify the seizure. *State v. Linze*, 389 P.3d 150, 154 (Idaho 2016). In *Linze*, the officer who first made the traffic stop stepped out of his car to provide cover for another officer conducting a canine sweep of the seized vehicle, taking his efforts away from the mission of the stop. *Id.* at 152. The court held this delayed the stop and, consequently, violated the rights of the seized individuals. *Id.* at 154. In another case, the Kansas Supreme Court noted the length of a stop alone is not determinative of whether it is unlawfully prolonged. *State v. Jimenez*, 420 P.3d 464, 477 (Kan. 2018). Because the officer in *Jimenez* engaged in a line of questioning that went beyond the mission of the stop, that court held the officer impermissibly prolonged the stop in violation of the 4th Amendment. *Id.*

- ii. The Fourth, Sixth, and Seventh Circuits as well as the highest courts in Iowa, Wisconsin, Georgia, and West Virginia analyze the actions of officers in relation to the duration of the stop to determine whether a stop was prolonged.

Other jurisdictions focus less on the investigatory activities themselves and more on the time they add to a traffic stop. In *United States v. Collazo*, 818 F.3d 247 (6th Cir. 2016), the Sixth Circuit held that twenty-one minutes was not an unreasonable amount of time to complete a traffic stop. *Id.* at 257–58. Because the time was not unreasonable, the court concluded the stop was not prolonged. *Id.* The court reached this conclusion even though some of the questions the officers asked within that timeframe were not related to the mission of the stop, including questions about the travel destination and the health of the passenger’s father. *Id.* at 251, 257–58. For the Sixth Circuit, it was sufficient that “most of the questions...were inquires related to the traffic stop, and none of them extended the traffic stop beyond a reasonable time.” *Id.* at 257–58. The Fourth Circuit likewise concluded that a phone call to request a K-9 unit did not violate *Rodriguez* where the overall length of the stop, 20 minutes, was not unreasonable. *United States v. Hill*, 852 F.3d 377, 383–84 (4th Cir. 2017). That court also noted that “none of the officers’ individual actions suggested a lack of diligence in pursuing the stop” and did not measurably extend the stop. *Id.* Finally, the Seventh Circuit has categorically stated that it was permissible for officers to ask

questions unrelated to the traffic violation that was the subject of a stop. *United States v. Walton*, 827 F.3d 682, 687 (7th Cir. 2016).

States have also adopted this more lenient view of the holding in *Rodriguez*. The Iowa Supreme Court held that a traffic stop which, by the court's own estimation, should not have taken longer than ten minutes was prolonged when it took twenty-five minutes to complete. *In re Pardee*, 872 N.W.2d 384, 396–97 (Iowa 2015). That court declined to consider the nature of some of the officer's inquiries, and their effect on reasonable suspicion, because they occurred after "the stop had already been prolonged past its permissible length." *Id.* at 397. The Wisconsin Supreme Court espoused similar reasoning when it stated, "Until [drafting the appropriate citations and explaining them to the driver] is done, and so long as [the officer] does not unnecessarily extend the process, the permissible duration of the traffic stop has not elapsed." *State v. Floyd*, 898 N.W.2d 560, 568–69 (Wis. 2017). The Supreme Court of Georgia has likewise noted that an activity not related to the mission of a stop, like a dog sniff, "can be done only concurrently with a mission-related activity, or it will unlawfully add time to the stop." *State v. Allen*, 779 S.E.2d 248, 259 (Ga. 2015). For these states, it is not the nature of activity alone, but rather the relation between the activity and the time it occupies that determines whether it prolongs a stop.

The Supreme Court of Appeals of West Virginia has adopted the particularly permissive view that *Rodriguez* only prohibits unreasonable extensions of

“an otherwise completed traffic stop.” *State v. Hill*, No. 16-0168, 2017 W. Va. LEXIS 241, at \*12 (Apr. 10, 2017); *see also State v. Brock*, 774 S.E.2d 60 (W. Va. 2015). In both *Hill* and *Brock*, the court held that dog-sniffs did not unconstitutionally prolong the stops in question because the stops were not complete when the dog-sniffs occurred. *Hill*, 2017 W. Va. LEXIS 241, at \*12; *Brock*, 774 S.E.2d at 73. This reasoning seems to conflict with the statement from *Rodriguez* that “the critical question...is not whether the dog sniff occurs before or after the officer issues a ticket.” 135 S. Ct. at 1616. While it is a minority view, it underscores the disuniformity with which lower courts have incorporated the holding in *Rodriguez*.

**B. There is disagreement regarding what police inquiries fall within the mission of a traffic stop.**

Courts are split over whether “the mission of a stop” is limited to the police actions enumerated in *Rodriguez* or, instead, encompasses a broader range of inquiries. This split is particularly evident when courts consider whether officers can inquire – by asking or performing additional database checks – into the criminal history of someone they have stopped. *Rodriguez* explicitly accounts for warrant checks, but it is silent on the issue of more extensive criminal background checks. *Id.* at 1615.

The Third Circuit adheres to a more “rigid” interpretation of *Rodriguez* in holding that the mission of a routine traffic stop is impermissibly exceeded when officers inquire into an individual’s

criminal history absent reasonable suspicion. *See Clark*, 902 F.3d 404. During a routine traffic stop in *Clark*, the driver of the stopped vehicle was unable to produce the vehicle’s registration but stated that the vehicle belonged to his mother. *Id.* at 406. After and despite confirming that the driver’s information was accurate – the car was registered to a woman with his same surname and address – the officer asked the driver several questions pertaining to his criminal record. *Id.* at 407, 411 (the officer asked, “whether he had been arrested, for what kinds of crimes, and the date of his last arrest”). The court held that the officer’s inquiry into the driver’s criminal history “was not tied to the traffic stop’s mission” because they already had confirmation that the driver was authorized to operate the vehicle, and therefore the questions impermissibly extended the stop. *Id.* at 411.

In contrast, the Tenth Circuit takes a broader approach to determining what constitutes the mission of a stop. In *United States v. Cone*, 868 F.3d 1150 (10th Cir. 2017), the court concluded that officers may ask questions about a driver’s criminal history during the course of a routine traffic stop. *Id.* at 1153. Immediately after requesting the driver’s license, the officer in *Cone* asked several questions directly pertaining to the driver’s criminal history. *Id.* at 1151–52 (noting the officer asked whether the driver had ever been in trouble before, if he had been to prison, and for what crimes). Citing *Rodriguez*, the court noted that “an officer’s mission during a traffic stop is not limited to determining whether to issue a ticket.” *Id.* at 1153. Rather, officers may make any “negligibly burdensome” inquiries that are necessary to safely

complete the mission. *Id.* Inquiries into the driver's criminal history were deemed to be "negligibly burdensome" in this instance. *Id.*

The split in the circuits is exacerbated by state court disagreements over the legality of other police inquiries, specifically whether courts must adhere to the "enumerated short list of things to do" in *Rodriguez*. *Jimenez*, 420 P.3d at 474. Even in neighboring states, differences have arisen over whether inquiries into a driver's travel history exceed the mission of a traffic stop. The Kansas Supreme Court concluded that *Rodriguez* does not permit "unbridled travel plan questioning as a staple of traffic stop inquiries." *Id.* at 469. Conversely, the Nebraska Supreme Court concluded that inquiries into a driver's travel history and present destination are "reasonably related in scope to the circumstances that justified the traffic stop." *State v. Barbeau*, 917 N.W.2d 913, 925 (Neb. 2018).

## **II. THIS ISSUE IS IMPORTANT AND RECURRING.**

### **A. This issue is important if the opinion in *Rodriguez* is to have uniform effect and deter opportunistic behavior by police, which renders *Rodriguez* a nullity.**

Without clarity as to what constitutes prolonging a stop, officers can engage in whatever investigatory activities they desire while relying on varied reasoning to conclude their actions do not prolong the stop. In jurisdictions that consider the

time required for the investigatory actions in the context of the overall duration of the stop, authorities can far exceed the mission of the stop as long as their actions take only a little time or occur simultaneously with the normal activities of the stop. These same actions would be considered unconstitutional in jurisdictions that view any actions outside the mission of the stop as prolonging the stop.

The same problem arises from differences between what constitutes the mission of the stop. This Court has repeatedly held that the mission includes “ordinary inquiries incident to the traffic stop” and negligently burdensome precautions for officer safety. *Rodriguez*, 135 S. Ct. at 1615–16 (quoting *Caballes*, 543 U.S. at 408); *see also Arizona v. Johnson*, 555 U.S. 323, 330 (2009). Some jurisdictions incorporate extensive searches of a subject’s criminal background as well as questions about travel plans into these categories. Elsewhere, such inquiries fall squarely outside the mission of the stop. These inquiries can be used, as they were here, to buy time to develop the reasonable suspicion an officer needs to conduct further investigations not supported by the traffic stop. Only this Court can provide a definitive scheme for determining what falls within the mission of a stop and what exceeds it.

#### **B. This issue is recurring.**

The issue presented here arises frequently throughout the country. According to the Bureau of Justice Statistics, being a driver in a traffic stop is the most common reason for contact with police. *Traffic*

*Stops*, Bureau of Justice Statistics (Dec. 28, 2018), <https://www.bjs.gov/index.cfm?tid=702&ty=tp>. In 2015, more than 19 million people in the United States contacted police in a traffic stop in which they were the driver, while an additional 5.9 million people contacted police as a passenger in a traffic stop. Elizabeth Davis et al., *Contact Between Police and the Public, 2015*, 4 (Oct. 2018). Approximately 3.7%, or more than 700,000, of the traffic stops experienced by drivers led to a search or arrest. *Id.* at 12. Each of these stops presents an opportunity for officers to conduct further investigations. Without further clarity, officers will confront each of these opportunities with varying understandings of permissible conduct, and citizens risk being subjected to disparate standards for the protection of their constitutional rights.

### **III. THIS CASE IS THE IDEAL VEHICLE TO CONSIDER THIS ISSUE.**

The disposition of the instant case is dependent upon the proper interpretation of *Rodriguez*. The facts fall squarely in line with the various splits apparent in the circuits and state courts. It is unclear whether Officer McDonough's actions unconstitutionally prolonged the stop by exceeding the purpose of the mission, or if the conclusion in *Rodriguez* instead calls for a consideration of the time required by the various activities. More specifically, it is unclear whether the valid mission of a traffic stop includes inquiries into travel plans and criminal history. This case turns on these issues. Mr. Bullock did not consent to any searches until after Officer McDonough conceivably

prolonged the stop, and the North Carolina Supreme Court only concluded Officer McDonough developed reasonable suspicion after the conversation in the patrol car. App. at 27a–28a. If Officer McDonough impermissibly prolonged the stop by asking questions about Mr. Bullock’s travel plans, conducting a comprehensive criminal background check, or taking any other actions not related to the mission of the stop, then no legitimate basis for the extended seizure and subsequent search remains.

### **CONCLUSION**

For the foregoing reasons, the Court should grant this petition for a writ of certiorari.

Respectfully Submitted,

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